

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois)	
Public Utilities Act, and an Order pursuant to Section 8-)	Docket No. 12-0598
503 of the Public Utilities Act, to Construct, Operate and)	
Maintain a New High Voltage Electric Service Line and)	
Related Facilities in the Counties of Adams, Brown,)	
Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton,)	
Macon, Montgomery, Morgan, Moultrie, Pike,)	
Sangamon, Schuyler, Scott and Shelby, Illinois.)	

TESTIMONY OF PERRY D. BAIRD ON BEHALF OF STOP THE POWER LINES COALITION

Direct Testimony Of
Perry D. Baird
On Behalf Of
Stop The Power Lines Coalition

1
2 **I. INTRODUCTION AND WITNESS QUALIFICATIONS:**
3

4 **Q: Please state your name, address, and relationship to Intervenor organization.**

5 A: My name is Perry D. Baird, and my office address is 2 South Central, P.O. Box 370,
6 Casey, Illinois 62420. I serve as a Co-Trustee under the Thelma Worick Revocable Trust,
7 which owns real estate which is in the direct path of the Primary Route, proposed by ATXI,
8 running through Clark County, Illinois (the "Primary Route"). In my capacity as said
9 Co-Trustee, I am a member of the STOP THE POWER LINES COALITION (the "Coalition"),
10 which sought to intervene in this proceeding, in December 2012.

11 **Q: Please summarize your educational background and professional experience.**

12 A: See a copy of my resume which is attached as STPL Exhibit 1.1 to this testimony.

13
14 **II. PURPOSE AND SCOPE:**

15 **Q: What is the purpose of your testimony?**

16 A: The purpose of my testimony is to provide an outline of the Coalition's specific
17 objections to the proposed ATXI Primary Route, as it runs through Clark County, Illinois, and to
18 provide the basis for and explanation of certain objections to the proposed ATXI Primary Route.
19 Also, I will introduce other witnesses offered by the Coalition and draw attention to other

intervenors offering direct testimony in opposition to the proposed Primary Route, as it runs through Clark County, Illinois.

III. SPECIFIC OBJECTIONS TO THE PRIMARY ROUTE:

Q: Do you have any objections to the segment of the Primary Route proposed by ATXI, running from Kansas to Sugar Creek?

A: Yes. The following is a list of the more significant problem areas along or near such segment of the proposed ATXI Primary Route, which I will hereafter discuss in more detail:

(A) THELMA WORICK REVOCABLE TRUST Property;

(B) DAHNKE'S PINE PATCH (being a Christmas tree farm);

(C) Within DAHNKE'S PINE PATCH, the transmitter tower for WMMC radio station,

owned by JDL Broadcasting, Inc., which is an intervenor in this case;

(D) A rural neighborhood near Marshall, Illinois;

(E) Quarry site for QUALITY LIME COMPANY (being a part of the "Tarble Limestone

Enterprises," which is an intervenor in this case); and

(F) Floodplain Easements granted to the UNITED STATES OF AMERICA, acting

through the U.S. Department of Agriculture, Natural Resources Conservation

Service.

Q: Are you offering any exhibits in support of or to aid your testimony?

A: Yes, there will be a number of exhibits connected to my testimony.

Q: As part of this overview, what are your exhibits?

A: To aid my overview testimony, I offer the following exhibits:

STPL Exhibit 1.2 is a notated copy of the Proposed Routes Map for Clark County, from the ATXI Illinois Rivers Project website. The notations thereon are defined as follows:

Point (A) is the “near-by” location of the single family residence located on the
THELMA WORICK REVOCABLE TRUST property;

Points (B/C) are the “near-by” locations of DAHNKE’S PINE PATCH (Christmas tree
farm) and the transmitter tower for WMMC radio station;

Point (D) is the routing of the proposed Primary Route through and between a rural
neighborhood, near Marshall, Illinois;

Point (E) is the “near-by” location of the quarry site for QUALITY LIME COMPANY,
located Southeast of Marshall, Illinois; and

Point (F) is the “near-by” locations of the Floodplain Easements granted to the UNITED
STATES OF AMERICA, acting through the U.S. Department of Agriculture, Natural Resources
Conservation Service.

Q: What is your next group of exhibits?

A: STPL Exhibit 1.3 is a notated copy of ATXI Exhibit 4.2 (Part 85 of 100, page 2 of 2)
showing the locations of the THELMA WORICK REVOCABLE TRUST property (Point (A)),
the DAHNKE PINE PATCH (Christmas tree farm) (Point (B)), and the transmitter tower for
WMMC radio station (Point (C)).

STPL Exhibit 1.4 is a notated copy of ATXI Exhibit 4.2 (Part 86 of 100, page 1 of 2)
showing the locations of the course of the proposed ATXI Primary Route through and between a
rural neighborhood, near Marshall, Illinois (Point (D)) and the beginning view of the quarry site
for QUALITY LIME COMPANY, located Southeast of Marshall, Illinois (Point (E)).

STPL Exhibit 1.5 is a notated copy of ATXI Exhibit 4.2 (Part 86 of 100, page 2 of 2)
showing the locations of the continuing view of the quarry site for QUALITY LIME
COMPANY, located Southeast of Marshall, Illinois (Point (E)) and the locations of the

Floodplain Easements granted to the UNITED STATES OF AMERICA, acting through the U.S. Department of Agriculture, Natural Resources Conservation Service (Point (F)).

For reference, STPL Exhibit 1.6 is a copy of ATXI Exhibit 4.2 (Part 87 of 100, page 1 of 3), showing the “alternative” Sugar Creek conclusions to the proposed ATXI Primary Route and proposed ATXI Alternate Route. I note that the terminus points of these proposed Primary and Alternate Routes are not at the same point.

IV. THELMA WORICK REVOCABLE TRUST PROPERTY

Q: With respect to the Thelma Worick Revocable Trust property, do you have specific objections?

A: Yes. According to ATXI's stated Prioritized Environmental Routing Criteria (ATXI Exhibit 4.4; also STPL Exhibit 1.7), the presence of residential use areas would constitute an environmental feature of “high sensitivity.” Despite that “high sensitivity,” the course of the proposed ATXI Primary Route runs near a single family farm residence and immediately North of the driveway thereto.

Q: With this part of your testimony, what are your exhibits?

A: Firstly, STPL Exhibit 1.8 is an aerial photograph (obtained from the Office of Clark County Supervisor of Assessments), with the addition of the approx. course of the proposed ATXI Primary Route in relationship to the single family residence and driveway.

Q: What is your next exhibit?

A: STPL Exhibit 1.9 is a closer-view aerial photograph (obtained from the Office of Clark County Supervisor of Assessments), with the addition of the approx. course of the proposed ATXI Primary Route in relationship to the single family residence and driveway.

Q: What is your next set of exhibits?

91 A: STPL Group Exhibit 1.10 is a group of seven (7) photographs showing three views of the
92 single family farm residence (having an approx. fair market value of \$150,000.00), the proximity
93 of the existing 138kV transmission line, and the course of the driveway from the residence.

94 Q: **Were any measurements taken from the existing 138kV transmission line to the**
95 **residence?**

96 A: Yes. The Southwest cable of the existing 138kV transmission line is located
97 approximately 237 feet from the residence. I would note that any claim of easement by ATXI
98 (or its predecessors-in-interest) for such 138kV transmission lines running across Trust-owned
99 property is not disclosed from a search of the land records in the Office of Recorder of Clark
100 County, Illinois.

101 Q: **For this part, do you have further testimony?**

102 A: As the proposed ATXI Primary Route crosses the Trust farmland and is parallel with the
103 existing 138kV transmission line, if the support poles of the proposed 345kV line are not placed
104 in alignment with the support poles for the existing 138kV line, the farming and cultivation of
105 the Trust agricultural acreage will be adversely impacted.

106 Moreover, according to ATXI's stated Prioritized Environmental Routing Criteria (ATXI
107 Exhibit 4.4; also, STPL Exhibit 1.7), the presence of "prime farmland" would constitute an
108 environmental feature of "high sensitivity." Despite that "high sensitivity," the course of the
109 proposed ATXI Primary Route runs through Trust farmland.

110 V. **DAHNIKE'S PINE PATCH (Christmas tree farm)**

111 Q: **With respect to Dahnke's Pine Patch (Christmas tree farm), do you have specific**
112 **objections?**

113 A: Yes. According to ATXI's stated Prioritized Environmental Routing Criteria (ATXI
114 Exhibit 4.4; also, STPL Exhibit 1.7), the presence of trees/woodlots would constitute an
115 environmental feature of "moderate sensitivity." Despite that "moderate sensitivity," the course
116 of the proposed ATXI Primary Route runs along the North boundary of Dahnke's Pine Patch
117 (Christmas tree farm).

118 Q: **With this part of your testimony, what are your exhibits?**

119 A: STPL Exhibit 1.11 is an aerial photograph (obtained from the Office of Clark County
120 Supervisor of Assessments), with the addition of the approx. course of the proposed ATXI
121 Primary Route in relationship to Dahnke's Pine Patch (Christmas tree farm).

122 VI. **WMMC RADIO STATION**

123 Q: **With respect to WMMC Radio Station, do you have specific objections?**

124 A: Yes. According to ATXI's stated Prioritized Environmental Routing Criteria (ATXI
125 Exhibit 4.4; also, STPL Exhibit 1.7), the presence of communication, radio and microwave
126 towers would constitute an environmental feature of "moderate sensitivity." Despite that
127 "moderate sensitivity," the course of the proposed ATXI Primary Route runs immediately North
128 of the transmitter tower of WMMC, which is located in the Northeast portion of the Dahnke's
129 Pine Patch (Christmas tree farm).

130 Q: **With this part of your testimony, what are your exhibits?**

131 A: STPL Exhibit 1.11 is an aerial photograph (obtained from the Office of Clark County
132 Supervisor of Assessments), with the addition of the approx. course of the proposed ATXI
133 Primary Route in relationship to the WMMC transmitter tower.

134 Q: **With respect to WMMC Radio Station, do you have any further testimony?**

135 A: Yes, I would invite your attention to the witness testimony and other evidence presented
136 by JDL Broadcasting, Inc., which is an intervenor in this case.

137 VII. **MARSHALL-AREA RURAL NEIGHBORHOOD**

138 Q: **Does the proposed Primary Route of the 345kV transmission line run near a rural**
139 **neighborhood, near Marshall, Illinois?**

140 A: Yes. According to ATXI's stated Prioritized Environmental Routing Criteria (ATXI
141 Exhibit 4.4; also, STPL Exhibit 1.7), the presence of residential use areas would constitute an
142 environmental feature of "high sensitivity." Despite that "high sensitivity," the course of the
143 proposed ATXI Primary Route runs through and between a rural neighborhood, near Marshall,
144 Illinois.

145 Q: **With this part of your testimony, what are your exhibits?**

146 A: STPL Group Exhibit 1.12 are three (3) aerial photographs (obtained from the Office of
147 Clark County Supervisor of Assessments), with the addition of the approx. course of the
148 proposed ATXI Primary Route in relationship to the described rural neighborhood.

149 VIII. **QUALITY LIME COMPANY**

150 Q: **With respect to the quarry site of QUALITY LIME COMPANY, do you have any**
151 **exhibits to offer?**

152 A: STPL Exhibit 1.13 is an aerial photograph (obtained from the Office of Clark County
153 Supervisor of Assessments), with the addition of the approx. course of the proposed ATXI
154 Primary Route in relationship to the quarry site of Quality Lime Company.

155 Q: **Do you have any further testimony?**

156 A: Yes, I would invite your attention to the witness testimony and other evidence presented
157 by Tarble Limestone Enterprises, which is an intervenor in this case.

158 IX. **FLOODPLAIN EASEMENTS**

159 Q: **Do you have any testimony to offer with respect to the Floodplain Easements**

160 **granted to the UNITED STATES OF AMERICA, acting through the U.S. Department of**

161 **Agriculture, Natural Resources Conservation Service?**

162 A: Yes, as alluded to in the 3/1/2013 public comment by Paula Hingson, Assistant State

163 Conservationist, of the United States Department of Agriculture, Natural Resources

164 Conservation Service, the proposed ATXI Primary Route would transect a Floodplain Easement

165 granted to the UNITED STATES OF AMERICA, by a Warranty Easement Deed.

166 Q: **With this part of your testimony, what are your exhibits?**

167 A: Firstly, STPL Exhibit 1.14 is a copy of a select page from a recent plat book, showing an

168 overview of the floodplain easement area.

169 Q: **What is your next exhibit?**

170 A: STPL Exhibit 1.15 is an aerial photograph (obtained from the Office of Clark County

171 Supervisor of Assessments), with blue-outlines of floodplain easement tracts and certain

172 neighboring tracts.

173 Q: **What is your next exhibit?**

174 A: STPL Exhibit 1.16 is a copy of a select page from a recent plat book, with additions of

175 approximate locations of floodplain easement areas.

176 Q: **What is your next exhibit?**

177 A: STPL Exhibit 1.17 is an aerial photograph (obtained from the Office of Clark County

178 Supervisor of Assessments), with blue-outlines of floodplain easement tracts and certain

179 neighboring tracts, and with the addition of the approx. course of the proposed ATXI Primary

180 Route in relationship to the floodplain easement located in Section 27, Township 11 North,
181 Range 11 West of the Second Principal Meridian, situated in Clark County, Illinois.

182 Q: **What is your next exhibit?**

183 A: STPL Exhibit 1.18 is a certified copy of the Warranty Easement Deed, from Carolyn S.
184 Robinson, et al., to the UNITED STATES OF AMERICA, acting through the U.S. Department
185 of Agriculture, Natural Resources Conservation Service. This copy was certified by the County
186 Clerk and Recorder of Clark County, Illinois, being the official custodian of the land records of
187 Clark County, Illinois.

188 Q: **What is your next exhibit?**

189 A: STPL Exhibit 1.19 is a certified copy of the Plat of Survey for the "Robinson" floodplain
190 easement to the UNITED STATES OF AMERICA. This copy was certified by the County Clerk
191 and Recorder of Clark County, Illinois, being the official custodian of the land records of Clark
192 County, Illinois.

193 Q: **Did you run a search on Exhibit C to ATXI's Petition to confirm whether the United**
194 **States of America was listed as a potential party entitled to notice?**

195 A: The United States of America was not listed.

196 Q: **Based upon your understanding as a practicing attorney, who should be given notice**
197 **for the United States?**

198 A: The Commission's Rules of Practice, 83 Ill. Adm. Code Part 200, do not address what
199 person must be served as the official representative of the United States Government, nor to my
200 knowledge does the Illinois Code of Civil Procedure or the Illinois Supreme Court Rules. I
201 therefore looked to the Federal Rules of Civil Procedure. Based upon my reading of Rule 4(i) of

the Federal Rules of Civil Procedure, specific notice must be given to the United States Attorney General and to the United States Attorney for the Southern District of Illinois.

Q: Did you run a search on Exhibit C to ATXI's Petition to confirm whether the United States Attorney General or the United States Attorney for the Southern District of Illinois were listed as potential parties entitled to notice?

A: Neither the U.S. Attorney General nor the U.S. Attorney for the Southern District of Illinois were listed.

Q: Based upon your professional knowledge and experience, do you have an opinion as to whether ATXI could legally transect the floodplain easement granted to the United States?

A: The Warranty Easement Deed, being STPL Exhibit 1.18, in effect divides or allocates ownership rights between the Robinson family and the United States. In fact, on the face of the Warranty Easement Deed, the United States paid the sum of Five Hundred Seventy-Six Thousand Dollars (\$576,000.00), for those rights.

In this instance, the federal government has prior and superior ownership/easement rights to any easement which ATXI might seek to obtain through these proceedings.

Furthermore, use of the subject property for construction of ATXI's 345 kV transmission line would appear to violate the provisions of Subpart III.A.2 of the Warranty Easement Deed, which precludes digging or destruction of vegetative cover, and Subpart III.A.7, which precludes building structures in the floodplain easement area.

Q: If ATXI wished to re-route the proposed Primary Route to avoid the identified floodplain easement, are there other floodplain easements to avoid?

225 A: Yes. STPL Exhibit 1.20 is a certified copy of the Warranty Easement Deed, from
226 Marietta J. Martin to the UNITED STATES OF AMERICA, acting through the U.S. Department
227 of Agriculture, Natural Resources Conservation Service. This copy was certified by the County
228 Clerk and Recorder of Clark County, Illinois, being the official custodian of the land records of
229 Clark County, Illinois.

230 Q: **What is your next set of exhibits?**

231 A: STPL Group Exhibit 1.21 are certified copies of the Plats of Surveys for the "Martin"
232 floodplain easements to the UNITED STATES OF AMERICA. These copies were certified by
233 the County Clerk and Recorder of Clark County, Illinois, being the official custodian of the land
234 records of Clark County, Illinois.

235 Q: **Do you have any further testimony with respect to the "Martin" floodplain**
236 **easement?**

237 A: Yes. On STPL Exhibit 1.17, the "Martin" floodplain easement is reflected as contained
238 within Tracts 2A, 2B and 2C.

239 "Martin" Tract 2A was conveyed to THOMAS W. BURNSIDE, by a Warranty Deed,
240 dated July 27, 2011. STPL Exhibit 1.22 is a certified copy of said Warranty Deed; and this copy
241 was certified by the County Clerk and Recorder of Clark County, Illinois, being the official
242 custodian of the land records of Clark County, Illinois.

243 "Martin" Tract 2B was conveyed to DONALD J. OCKERMAN, by a Warranty Deed,
244 dated January 24, 2012. STPL Exhibit 1.23 is a certified copy of said Warranty Deed; and this
245 copy was certified by the County Clerk and Recorder of Clark County, Illinois, being the official
246 custodian of the land records of Clark County, Illinois.

247 "Martin" Tract 2C was conveyed to KENNETH L. HALCOMB, by a Warranty Deed,
248 dated November 1, 2011. STPL Exhibit 1.24 is a certified copy of said Warranty Deed; and this
249 copy was certified by the County Clerk and Recorder of Clark County, Illinois, being the official
250 custodian of the land records of Clark County, Illinois.

251 To the extent that ATXI included these "new" landowners as potentially affected parties,
252 I would suggest their mere inclusion would be insufficient or inadequate notice if the course of
253 the proposed ATXI Primary Route were changed to more directly affect their property ownership
254 and use.

255 Moreover, to the extent any change to the proposed ATXI Primary Route would attempt
256 to affect the floodplain easements of the United States, the same issues discussed with the
257 "Robinson" easement would apply: (a) proper notice to the United States government and the
258 appropriate officials thereof; and (b) prior and superior ownership/easement rights of the United
259 States government.

260 **Q: From your review of STPL Exhibits 1.14 and 1.17, could any other neighboring**
261 **tract be affected if ATXI wished to re-route the proposed Primary Route to avoid the**
262 **"Robinson" floodplain easement?**

263 A: Yes. On STPL Exhibit 1.17, Tract 3 could be so affected. On STPL Exhibit 1.14,
264 the indicated owner of that tract is Clyde Busse.

265 **Q: Do you know whether Clyde Busse owns Tract 3?**

266 A: From my review of the Clark County land and tax assessment records, Mr. Busse
267 conveyed Tract 3 to GEORGE CARL BARTH and HEATHER LEONORE BARTH, by a
268 Warranty Deed, dated December 17, 2009. STPL Exhibit 1.25 is a certified copy of said

269 Warranty Deed; and this copy was certified by the County Clerk and Recorder of Clark County,
270 Illinois, being the official custodian of the land records of Clark County, Illinois.

271 **Q: Do you have any further testimony with respect to the "Barth" Tract?**

272 A: To the extent that ATXI included Mr. & Mrs. Barth as potentially affected parties, I would
273 suggest their mere inclusion would be insufficient or inadequate notice if the course of the
274 proposed ATXI Primary Route were changed to more directly affect their property ownership
275 and use.

276 **Q: Do you have any other comments concerning the "Robinson" floodplain easements?**

277 A: According to the governing federal regulations, floodplain easements cannot be modified
278 or terminated. 7 C.F.R. §624.10(c). While land exchanges are permissible in limited situation,
279 *id.*, there is no evidence of a pending land exchange in this situation. Furthermore, the
280 Conservation Programs Manual (Circular No. 7 Part 514, 9/6/2007) published by the Natural
281 Resources Conservation Service to set forth policy and procedural guidance where, overhead
282 electrical transmission lines and other infrastructure projects may impact a floodplain provides in
283 relevant part:

284 **Proposed infrastructure projects must avoid...EWPP-FRE**
285 **(floodplain) easements because the agency has no authority under**
286 **those programs to modify their terms.**

287 Finally, under the precedent set previously in this case by the Administrative Law Judge's
288 January 17, 2013 Order and the Commission's related January 24, 2013 Order, ATXI's failure to
289 give proper notice to the United States Government means that ATXI's application, insofar as it
290 proposed to construct its transmission line on the Primary Route in Clark County, is incomplete
291 and cannot proceed until the requisite notice is given. What the foregoing means is that: (1)

292 ATXI lacks lawful authority to build its proposed transmission line on the proposed Primary
293 Route in Clark County; and (2) even if ATXI could lawfully build its line in the Robinson
294 floodplain property, ATXI has not provided the requisite notice to proceed with the proposed
295 Primary Route in Clark County.

296 X. **ATXI'S POTENTIAL "MODIFIED ROUTE"**

297 Q: **Mr. Baird, are you aware that ATXI has developed a potential "modified route" to**
298 **avoid the Robinson floodplain easement?**

299 A: Yes, I became aware of ATXI's possible intent to submit a "modified route" on March 29,
300 2013, the day Intervenor's testimony was due, when I reviewed ATXI's response to STPL Data
301 Request 4.04, which ATXI apparently submitted late in the evening on March 28, 2012. A copy
302 of ATXI's response to STPL Data Request 4.04 is attached as STPL Exhibit 1.26.

303 Q: **What was your reaction to learning of STPL's potential "modified route" on March**
304 **29, 2013?**

305 A: I was astonished. Based on ATXI's responses to STPL Data Request 4.05, it is clear that
306 ATXI has known since October 17, 2012 that the National Resources Conservation Services
307 (NRCS) objected to ATXI's plan to cross the Robinson floodplain easement and contended that
308 the United State's government's easements were superior to any that ATXI might acquire. In
309 fact, in an October 17, 2012 email, an NRCS official told ATXI's representative:

310 These easements must be avoided.

311 ATXI's representative, Leigh Morris, responded:

312 Thank you for this information. I have shared this with the appropriate members of our
313 team.

314 A copy of that email exchange is STPL Exhibit 1.27. ATXI then proceeded to file its Petition on
315 November 7, 2012.

316 **Q: Do you have any other thoughts with respect to ATXI's "modified route" disclosure?**

317 A: Yes. According to ATXI's response to STPL Data Request 4.01, ATXI's Primary Route is
318 located along the Robinson floodplain easement area. A copy of ATXI's response to STPL Data
319 Request 4.01 is attached as STPL Exhibit 1.29. In fact, based upon the map included in ATXI
320 Exhibit 4.2 (Page 2 of 2 of Part 86 of 100), it is clear that ATXI's Primary Route crosses the
321 Robinson floodplain easement. Furthermore, ATXI also produced a certified letter from the
322 NRCS that was copied to ATXI's counsel in this matter, Albert Sturtevant, and to NRCS General
323 Counsel Regional Attorney, formally advising ATXI of NCRS' objection to use of the property
324 subject to the Robinson floodplain easement. A copy of NRCS February 27, 2013 letter, not
325 including the attached map and floodplain easement, is attached as STPL Exhibit 1.28.

326 **Q: Does the late disclosure of the ATXI "modified route" change any of your previously**
327 **expressed opinions and testimony in this case?**

328 A: No. However, I would certainly object if ATXI sought to introduce its "modified route" in
329 this proceeding.

330 **XI. CONCLUSION:**

331 **Q: Does this conclude your direct testimony?**

332 A: Yes, it does. Thank you for your attention.